



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF BROWNFIELD) MANDATORY SHORELAND ZONING ACT
OXFORD COUNTY) 38 M.R.S.A., SECTION 438-A(3)
SHORELAND ZONING ORDINANCE)
ORDER #50-09) CONDITIONAL APPROVAL

Pursuant to the provisions of 38 M.S.R.A., Section 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective March 24, 1990, and amended through May 1, 2006, the Department of Environmental Protection has considered the shoreland zoning provisions within the Shoreland Zoning Ordinance for the Town of BROWNFIELD, as adopted on June 10, 2009, and FINDS THE FOLLOWING FACTS:

1. The Mandatory Shoreland Zoning Act (Act) requires the Town of Brownfield to establish zoning controls in areas within 250 feet of the normal high water line of great ponds, and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of streams and tributary streams. Such zoning standards must be consistent with or no less restrictive than those in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, (Guidelines) as adopted by the Board of Environmental Protection (Board).
2. The Act specifies that before a locally adopted shoreland zoning ordinance or map, or amendments to that ordinance or map, is effective, it must be approved by the Commissioner of the Department of Environmental Protection (Department). The Department may approve, approve with conditions, or deny a locally adopted ordinance or map. If denied, or approved with conditions, such action must be preceded by notice to the municipality.
3. On June 25, 2009, the Town of Brownfield submitted a copy of the Shoreland Zoning Ordinance (Ordinance) as adopted on June 10, 2009, to the Department for review. The Ordinance includes numerous changes that affect shoreland zoning application. These changes were made in order to update the Town's Ordinance in an effort to make it consistent with the May 1, 2006 Guidelines.
4. The Department review of the Shoreland Zoning Ordinance of the Town of Brownfield revealed the following significant deficiencies:
 - A. The Town prematurely repealed the timber harvesting standards from the Ordinance by removing them from the Ordinance prior to the statutory date established under 38 M.R.S.A. Section 438-B(5). The Town must continue to regulate timber harvesting in the shoreland zone until this statutory date.
 - B. Section 12(E) (3) pertaining to *Contiguous Lots – Vacant or Partially Built* contains an exclusion from the requirement that certain lots be combined if adjoining

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nonconforming lots come under the same ownership. That exclusion however must be tied to the date that the Town of Brownfield enacted lot size requirements greater than 100 feet of shore frontage and 20,000 square feet of lot area, not the effective date of a later ordinance or amendment. That date is June 8, 1991, but is not referenced in Section 12(E) (3).

- C. Section 15(A), Minimum Lot Standards, does not comply with the minimum requirements.
 - D. Section 15(H) (5) contains an incorrect reference to the erosion and sedimentation control standards within the Ordinance.
5. In a letter dated July 10, 2009, the Town of Brownfield was notified by the Department about the deficiencies described in Finding 4.

Based on the above Findings of Fact, the Department makes the following CONCLUSIONS:

- 1. The Shoreland Zoning Ordinance for the Town of Brownfield, as amended on June 10, 2009, is substantially consistent with the requirements of the Mandatory Shoreland Zoning Act, 38 M.S.R.A., Section 438-A, EXCEPT FOR the deficiencies described in Finding 4.
- 2. The Department can correct the deficiencies described in Finding 4 by approving the Brownfield Ordinance with the condition that the Ordinance be changed to reflect the requirements described in Finding 4.

THEREFORE, the Department APPROVES the Shoreland Zoning Ordinance for the Town of Brownfield as adopted on June 10, 2009, WITH THE FOLLOWING CONDITIONS:

- 1. The Town of Brownfield Shoreland Zoning Ordinance shall be amended to establish Section 15(T) that shall include the following language:

“Timber Harvesting

- (1) In a Resource Protection District abutting a great pond, timber harvesting shall be limited to the following:
 - (a) Within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:
 - (1) The ground is frozen;
 - (2) There is no resultant soil disturbance;
 - (3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;
 - (4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground

- level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and
- (5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.
- (b) Beyond the 75 foot strip referred to in Section 15(T) (1) (a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 4 1/2 inches in diameter at 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.
- (2) Except in areas as described in Section 15(T) (1) above, timber harvesting shall conform to the following provisions:
- (a) Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:
- (i) Within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
- (ii) At distances greater than one-hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.
- (b) Timber harvesting operations exceeding the 40% limitation in Section 15(T) (2) (a) above, may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the planning board's decision.
- (c) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls

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below the normal high-water line of a water body or tributary stream shall be removed.

(d) Timber harvesting equipment shall not use stream channels as travel routes except when:

(i) Surface waters are frozen; and

(ii) The activity will not result in any ground disturbance.

(e) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

(f) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.

(g) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.”

2. Section 4(B) of the Town of Brownfield Shoreland Zoning Ordinance shall be amended to repeal Section 15(T) in its entirety on the date established under 38 M.R.S.A. Section 438(B) (5).

3. The second paragraph in Section 12(E) (3) of the Town of Brownfield Shoreland Zoning Ordinance, *Contiguous Lots – Vacant or Partially Built* shall read:

“This provision shall not apply to two (2) or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on June 8, 1991, and recorded in the Registry of Deeds if the lot can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

A. Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

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B. Any lots that do not meet the frontage and lot size requirements are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.”

3. Section 15(A)(1) of the Town of Brownfield Shoreland Zoning Ordinance shall be amended in full to read as follows:

“(1) Lots shall be at least 2 acres in size per dwelling unit, and governmental, institutional, commercial or industrial principal structure. Lots shall also contain a minimum of 200 feet of shore frontage per dwelling unit, and 300 feet of shore frontage per principal governmental, institutional, commercial or industrial structure.”

4. Section 15(H) (5) of the Town of Brownfield Shoreland Zoning Ordinance shall be amended to reference “Section 15(P)” of the Ordinance rather than “Section 15(Q)”.

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PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...